

General Information Letter: No addition modification is provided for benefits excluded from federal adjusted gross income under IRC Section 132(f).

January 6, 1999

Dear:

This is in response to your letter dated November 9, 1998 in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your request you stated:

This letter requests information on the state tax consequences of the use of a pretax salary reduction plan for parking fees under Section 132(f) of the Internal Revenue Code.

Following the enactment of the Transportation Equity Act of the 21<sup>st</sup> Century in June of 1998, the IRS confirmed that employers can offer employees a choice between cash and a tax-free reimbursement of parking, mass transit fares and van pooling expenses, up to specified monthly limits. Employees electing tax-free reimbursement of parking, etc. would receive their reimbursement on a pretax salary-reduction basis.. The reimbursement would be free of federal income, FICA, and FUTA taxes.

The question I have is, "how will the state treat an employee who elects to reduce his/her salary for state income and SUTA tax purposes?" I assume that employees electing to receive cash will be treated the same as for federal purposes, i.e. the cash is taxable for both state income and SUTA purposes.

Please note that the cash v. commuting reimbursement choice must be offered under a stand-alone plan and not as part of a Section 125 cafeteria plan.

Section 201 of the Illinois Income Tax Act ("IITA") imposes an income tax on every individual, corporation, trust and estate for the privilege of earning or receiving income as a resident of Illinois. This tax is imposed upon each resident's net income which is defined in section 201as that portion of a person's base income that is allocated to this state. See Section 201 generally. Section 203(a)(1) directs that the computation of base income begin with a

person's federal adjusted gross income as modified by subsection (b). In subsection (b) certain additions and subtractions are made to a person's adjusted gross income to arrive at base income. No provision in section 203(a)(2) would require the addition back of sums excluded under IRC section 132. Hence, any item properly excluded from federal adjusted gross income under section 132 of the Internal Revenue Code will be excluded from Illinois net income.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian  
Staff Attorney